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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Report on the situation of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Hannu Halinen, Special Rapporteur, pursuant to Commission on Human Rights resolution 1993/2 A

Introduction

1. At its forty-ninth session, the Commission on Human Rights adopted resolution 1993/2 A of 19 February 1993, in which it decided to appoint a special rapporteur with the following mandate:

> "(a) To investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967;
>
> "(b) To receive communications, to hear witnesses, and to use such modalities of procedure as he may deem necessary for his mandate;
>
> "(c) To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories."

2. The former Special Rapporteur, Mr. René Felber (Switzerland), presented reports to the Commission at its fiftieth and fifty-first sessions (E/CN.4/1994/14 and E/CN.4/1995/19 respectively). The current Special Rapporteur, Mr. Hannu Halinen (Finland), presented reports to the Commission at its fifty-second, fifty-third and fifty-fourth sessions (E/CN.4/1996/18, E/CN.4/1997/16 and E/CN.4/1998/17, respectively).

3. The Special Rapporteur once again wishes to reiterate the belief that his role is not an accusatory one, but rather has the objectives of establishing a meaningful and constructive dialogue with all the parties concerned and helping overcome problems having to do with human rights concerns in the area. He continues to believe that the exercise of his mandate should prevent violations of human rights and improve the overall human rights situation.

4. During the period under review, the Special Rapporteur met with representatives of Governments, intergovernmental, non-governmental organizations and individuals and received written information from intergovernmental and non-governmental organizations as well as individuals. The Special Rapporteur should once again like to reiterate his regret at the lack of cooperation on the part of the Government of Israel, which he continues to believe would be clearly in the interest not only of respect for human rights but also of the Government itself.

5. Since the last session of the Commission on Human Rights, the Special Rapporteur availed himself of every opportunity afforded to him to hold both formal and informal discussions on issues related to his mandate, in Geneva, Brussels, the Middle East and other venues. Before submitting his report to the Commission, the Special Rapporteur decided to carry out a visit to the occupied Palestinian territories, Israel and Egypt from 3 to 12 January 1999, together with a staff member from the Office of the High Commissioner for Human Rights. He visited Jerusalem, Gaza, Ramallah, Jericho, Tel Aviv, and Cairo.

6. The Special Rapporteur met in Ramallah with the President of the Palestinian Authority, Mr. Yasser Arafat, and discussed issues relating to his mandate. Also in Ramallah, he met with Mr. Nabeel Shaath, Minister of Planning and International Cooperation of the Palestinian Authority, and with Mrs. Hanan Ashrawi, Member of the Palestinian Legislative Council. In Jericho, the Special Rapporteur met with Mr. Saeb Erekat, the Minister for Local Government of the Palestinian Authority. In Gaza, the Special Rapporteur met with Mr. Kamal El-Sharafi, Chairman of the Committee of Oversight and Human Rights of the Palestinian Legislative Council; as well as with Dr. Haider Abdel Shafi, Commissioner-General of The Palestinian Independent Commission for Citizens' Rights. While in Gaza, the Special Rapporteur met with Mrs. Soha Arafat, President of the Palestinian High Council for Motherhood and Childhood, as well as with Mr. Chinmaya Gharekhan, the United Nations Special Coordinator in the Occupied Territories. In Jerusalem, the Special Rapporteur met with Mr. Feisal Husseini. During his visit to the area, the Special Rapporteur met with representatives of United Nations agencies, national and international humanitarian organizations, with representatives of a large number of Palestinian and Israeli non-governmental organizations, academic institutions as well as with private individuals.

7. In June 1998, the Special Rapporteur attended a conference in Jerusalem entitled "Fifty Years of Human Rights Violations".

8. In Egypt, the Special Rapporteur met in Cairo with Mr. Amr Moussa, the Minister for Foreign Affairs of Egypt, and Mrs. Naila Gabr, Deputy Assistant

Foreign Minister for Human Rights. While in Cairo, the Special Rapporteur also met with Mr. Ahmed Esmat Abdel Meguid, the Secretary-General of the League of Arab States, and Mr. Said Kamal, the head of the Palestinian Affairs Department of the League of Arab States. In addition, he met with Mr. Edmund Cain, United Nations Resident Coordinator, and Mr. Nadir Hadj-Hammou, Deputy Resident Representative, United Nations Development Programme.

9. The Special Rapporteur wishes to express his appreciation to Mr. Arafat and the Palestinian Authority for the kind cooperation extended to him in the course of his mission. The Special Rapporteur also wishes to extend his appreciation to Mr. Amr Moussa and the Government of Egypt as well as to the League of Arab States.

10. The Special Rapporteur expresses his sincere gratitude to the High Commissioner for Human Rights and to the United Nations Special Coordinator in the Occupied Territories and the staff of their offices in Gaza for the most efficient logistical and other support provided to the mission.

I. PRINCIPAL CONCERNS REGARDING THE SITUATION OF HUMAN RIGHTS

11. Despite encouraging steps agreed upon at Wye Plantation in October 1998, the process leading to a lasting peace remains stalled. Some positive developments can be recognized in the alleviation of human rights concerns in the area. However, the threat of further human rights violations has increased in a tangible way due to frustration linked to the non-implementation of the agreed processes, on the one hand, and heightened political tension on the other.

12. The Special Rapporteur reaffirms once again that sustainable peace cannot be achieved without respect for human rights. The promotion and protection of human rights is an indispensable part of maintaining and strengthening peace and security as well as advancing social and economic development. A piecemeal approach to peace is not viable; only a comprehensive peace covering the economic, social and security interests of both sides can guarantee a lasting solution. Human rights are universal, indivisible, interdependent and interrelated. This approach, adopted by the international community at the World Conference on Human Rights, applies also to peace. The old axiom, Si vis pacem, para bellum (If you want peace, prepare yourself for war.), can no longer offer either side an acceptable justification, in terms of purely military considerations. A wider concept of security - as discussed and formulated in other regions of the world - is required to establish the basis for the search for peace between Israelis and Palestinians.

13. To understand the inherent interrelationship between human rights and peace and security requires trust on both sides in future peaceful coexistence between the two peoples, based on equal human values. Instead of imposing unilateral acts on the other partner, a determined quest by both sides for confidence-building measures is urgently needed. Confidence is not built by breaking agreements or acquiescing to situations that cause frustration. In the long run, an effective fight against terrorism is unthinkable without trust and confidence between the parties.

14. The foundation of peace and security is firmly established in international law. Strict adherence, de facto and de jure, to international human rights law and international humanitarian law is the prerequisite for creating trust and strengthening security in the wider sense. The Israeli occupation of the Palestinian territories is the root cause of human rights violations in the area. The occupation remains legally in force during the transition period. International humanitarian law, and particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is therefore fully applicable to and binding on the Government of Israel.

15. The United Nations General Assembly, in its resolution ES-10/3 recommended that the High Contracting Parties to the Fourth Geneva Convention convene a conference on measures to enforce the Convention in the occupied Palestinian Territory, including Jerusalem, and to ensure its respect in accordance with their obligations under article 1. This recommendation was reiterated in resolutions ES-10/4 and ES-10/5. It is necessary to proceed on the path suggested by the General Assembly as soon as possible, for two main reasons: first, at a time of complex political processes there is a need to reaffirm the legal status of the occupied territories until the end of the occupation; second, the human rights and humanitarian concerns as described below are in themselves a raison d'être for re-establishing the applicability of the Convention in general, as well as with respect to the concrete situations in question.

16. Notwithstanding steps taken to improve the Palestinian economy - such as shorter periods of closures, increased number of work permits, the opening of the Gaza airport and discussions on the seaport and industrial park - there are still no signs of sustained economic growth. Too many factors remain which create obstacles in the pursuit of, inter alia, open access to markets, fair competition rules and taxation procedures, as well as private and public sector investments. The disproportional dependence of the occupied territories on the Israeli trade and economy does not allow healthy economic development for the Palestinians. To let Palestinians exercise their right to economic development would inevitably contribute to enforcing political stability and security for both Israelis and Palestinians.

17. The following paragraphs contain a brief summary of the principal concerns regarding the situation of human rights in the Palestinian territories occupied since 1967. The Special Rapporteur wishes to reiterate that the reason he draws attention to these concerns is to foster respect for human rights. They should therefore not be read as being accusatory, but rather in the context of finding ways to overcome these concerns. The report once again contains less first-hand information than the Special Rapporteur would have hoped to present owing to the lack of a possibility to visit Israel officially. He remains convinced that more contacts and discussions would enable him to fulfil his mandate in an even more objective and impartial manner.

18. The Special Rapporteur wishes to recall that during his visits to Gaza, East Jerusalem, parts of the West Bank and Israel, he was able to obtain valuable written and oral information from intergovernmental, non-governmental and humanitarian organizations as well as from individuals. He made a point

of meeting the main Israeli non-governmental organizations in order to ensure that his sources of information were as wide and accurate as possible in light of the constraints cited above.

19. Violations of human rights in the occupied Palestinian territories have continued during the period under review, to a large extent along the same lines as in the past. During his recent visit to the area, the Special Rapporteur was able to gain insight into the human rights issues currently giving rise to the greatest preoccupation among the Palestinian population. These concerns have been exacerbated by the unilateral suspension by Israel on 2 December 1998 of the implementation of the Wye River Memorandum. Several interlocutors told the Special Rapporteur that human rights violations actually stemmed from the peace agreements and that the Palestinian population was currently living in a vacuum as far as protection of their human rights was concerned. He was told that Israel was violating human rights in the name of security. Nevertheless, human rights were, more than before, being seen by some as the vehicle to advance the peace process.

20. The occupation was viewed as being more forceful after the beginning of the peace process. The Special Rapporteur was told that before the peace process, the majority of human rights violations were individual, whereas they had become more collective in nature. The general human rights situation in areas under the control of the Palestinian Authority had deteriorated since the signing of the Wye River Memorandum. People thought that the situation was better without the peace process. Other sources informed the Special Rapporteur that not much had changed in the pattern of human rights violations, but rather in their scope.

21. The expansion of existing Israeli settlements and the building of new ones, as well as bypass roads connecting the settlements between themselves and with Israel, is currently the source of greatest concern in the occupied territories. In addition, the bypass roads disrupt the demographic continuity of the Arab environment. Ten bypass roads are said to have been built in the occupied territories in 1998. The attendant confiscation of Palestinian-owned land and the destruction of their agricultural infrastructure is further exacerbating tensions in the occupied territories. The Special Rapporteur was told that for the first time, farmers in some areas were prevented by the Israeli authorities from harvesting their crops. The Special Rapporteur's attention was drawn by all of his interlocutors to the pronounced increase in Israeli settlement activity and the concomitant confiscation of Palestinian-owned land since the signing of the Wye River Memorandum in October 1998. According to most estimates, the number of settlements built in contravention of article 49 of the Fourth Geneva Convention has reached 190.

22. The Special Rapporteur was able to visit a number of settlements in and around Jerusalem and to observe the network of bypass roads. He was informed that the building of 28 new bypass roads was announced after the signing of the Wye River Memorandum. He was told that the Israeli occupation had deprived Arab Jerusalemites of approximately 80 per cent of their land and that there were currently 17 settlements which spread in three "belts" around the city. The intention was to expand "Greater Jerusalem" into "Metropolitan Jerusalem", an "umbrella" that would incorporate neighbouring municipalities. The Special Rapporteur was told that 52 per cent of the land in East Jerusalem

was for Palestinians while some 34 per cent had been given to Jews. There were practically no Jews in East Jerusalem in 1967; at present, there are some 163,000 Israelis and 155,000 to 158,000 Palestinians. The Israeli authorities have set the ratio of the Israeli and Palestinian populations in East Jerusalem at 73.5 per cent Jews and 26.5 per cent Arabs. Of particular concern to Palestinians was Israeli construction in the Arab neighbourhoods of Ras El Amud and Silwan. After the signing of the Wye River Memorandum, settlers seized a house in the Sheikh Jara neighbourhood and moved into two additional houses. Preparations for similar actions were said also to be under way in Ras El Amud and Burj Laqlaq. Numerous Bedouin are threatened with eviction from sites near the settlements in the Jordan Valley and Jericho areas. The Special Rapporteur visited a Palestinian living in a bus which is completely surrounded by a settlement built on his land.

23. The Special Rapporteur was able to observe the infrastructure work which had been carried out for the settlement on Jabal Abu Ghneim, to be called Har Homa. It will be recalled that in its resolution ES-10/2, the General Assembly condemned the construction by Israel of a new settlement in Jabal Abu Ghneim to the south of occupied East Jerusalem, and reaffirmed that Israeli settlements in all the territories occupied by Israel since 1967 were illegal and an obstacle to peace. In its resolution ES-10/3, the Assembly condemned the failure of the Government of Israel to comply with the demands made by the Assembly at its tenth emergency special session in resolution ES-10/2. It reiterated that all illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian territory, especially settlement activity, and the practical results thereof could not be recognized irrespective of the passage of time.

24. The increased rate of demolition of Palestinian houses which has continued unabated has given rise to serious concern over the period under review. The reason given is that they had been built without a licence, in an "unscientific way" or in a "green area". Some 21,000 housing units would be required for the Palestinian inhabitants of Jerusalem alone. A licence to build a house, which involves a lengthy procedure, costs approximately US$ 25,000 and expires within a year even if no construction takes place. In addition, Palestinians are not allowed to build more than two floors. In 1997, the Special Rapporteur visited the Samud "Steadfastness Camp" on a site in East Jerusalem where some 70 families whose houses had been demolished were living in tents in order not to leave the municipal boundaries of Jerusalem and lose their identity cards. During his recent visit to the area, he visited 16 of those families who are now living in an unfinished building in East Jerusalem with no amenities. According to the sources, 31 Palestinian structures were demolished in Jerusalem in 1998, affecting more than 300 persons including 120 children. He was told that 17 houses and a school had been demolished for the construction of Road No. 1. Over 700 demolitions are estimated to have taken place from the signing of the Oslo Accords until the end of 1998. The Special Rapporteur was informed that, in addition to constituting collective punishment, house demolitions were considered by Palestinians as sources of extreme provocation and incitement.

25. The situation of the Arab inhabitants of Jerusalem continued to be precarious, particularly with regard to their identity cards, which made the registration of newborn children and family reunification in the city

difficult. The registration of children may take up to seven years if one of the parents is not from Jerusalem. It is estimated that there are currently some 10,000 unregistered Palestinian children in Jerusalem. This means that they do not have a birth certificate and cannot obtain an identity card at the age of 16, cannot enrol at a university or get married. The "centre of life" criterion has continued to be applied by the Israeli authorities to determine whether Palestinians are entitled to live in Jerusalem. All Palestinians in Jerusalem are considered as foreigners and the "Law of Entry into Israel" of 1952 is applied. The Special Rapporteur was informed that many persons with identity cards discover that they have been deleted from the municipality's computer. From January to August 1998, 346 identity cards were taken from Arab Jerusalemites. The Special Rapporteur was informed that the conflict was being changed from a national into an ethnic one. He was told that the Israeli authorities applied a "three circles policy" to the Arab inhabitants of Jerusalem, consisting of isolation, deportation and replacement, with the alleged aim of reducing the Palestinian population to not even a minority by the time of the final status negotiations.

26. The Special Rapporteur was informed that the issue of residency rights and identity cards had serious repercussions on the health of Arab Jerusalemites, particularly infants, since the National Insurance Institute conducts an investigation of the whole family's residency status every time a child is born. The investigation may take more than a year and starts anew with every new birth in the family. During the investigation, the infant does not benefit from health insurance. This practice may have very serious repercussions for children who require medical treatment after birth. The Special Rapporteur was informed that the infant mortality rate in East Jerusalem was double that of the Jewish sector.

27. The Special Rapporteur was informed about the situation of disabled Palestinians and the legacy of the occupation with regard to the destruction of the infrastructure, affecting economic and social rights and having a negative psychological effect. Disabled Palestinians felt discriminated against and said they were receiving only 15 to 20 per cent of the services provided to Israelis. The Special Rapporteur was told that Israeli soldiers treat Palestinians with disabilities in a dehumanizing way and that many did not receive permits to enter Israel for treatment. It was estimated that some 15,000 Palestinians were permanently disabled during the intifada. Reference was made to the access law regarding all public facilities. The situation of prisoners with disabilities was described as particularly difficult. In addition, the Special Rapporteur was told that prisoners who had been imprisoned in small spaces could develop physical disabilities.

28. The issue of Palestinian prisoners who remain detained in Israeli prisons and detention centres, in violation of articles 49 and 76 of the Fourth Geneva Convention, continues to be a serious source of concern for the population of the occupied territories. The Special Rapporteur was informed that more than 2,200 Palestinians continue to be detained in Israel, 7 of whom are women and some 40 of whom are minors under 16 years of age. Their conditions of detention were described as not meeting international standards, especially regarding medical care and sanitation. The Special Rapporteur was told that detainees only received urgent dental treatment while convicted prisoners receive more thorough dental treatment. Many prisoners are placed

in isolation, individually and in groups, at times reportedly for no reason or on the grounds that they are "troublemakers". The Special Rapporteur was informed that two prisoners had been killed during a recent hunger strike.

29. A serious problem facing Palestinian detainees is lack of access to their lawyers and of family visits owing to the restrictions placed by the Israeli authorities on the freedom of movement of Palestinians between parts of the occupied territories and Israel. The Special Rapporteur was informed that some prisoners had not received family visits for years because their family members cannot obtain a permit to enter Israel. Prisoners are occasionally subjected to transfers which creates additional difficulties for visits. The Special Rapporteur was told that the sentences meted out to Palestinian prisoners were harsher after the signing of the Oslo Accords. For example, on 4 January 1999 five minors were sentenced to five-month prison sentences for throwing stones. A number of Palestinian detainees are represented by Israeli lawyers.

30. Palestinian lawyers have complained that they do not receive Israeli military orders in writing immediately after they have been issued. Military orders are issued in accordance with the Emergency Regulations dating back to the British Mandate and are applicable even in area A which is under the control of the Palestinian Authority. The Special Rapporteur was told that the lack of due process and of fair trial guarantees has serious repercussions for both the prisoners and their family, especially children, including at the psychological level. The Special Rapporteur was informed about Military Order 1456 of 11 June 1998 concerning armed civil guards in settlements whom the police are allowed to ask for assistance. He was told that settler guards, like the police and army, have the right to arrest persons. Four Palestinians were killed by settlers in the West Bank in 1998. So far, 1,457 military orders have been issued regarding the West Bank and 1,316 concerning the Gaza Strip.

31. The Special Rapporteur was informed that the number of administrative detainees had declined considerably during the period under review, and currently stands at fewer than 100 persons. Among the administrative detainees are persons who had served their prison terms and had been transferred to administrative detention instead of being released, as was the case with a person who had completed serving a 10-year prison sentence. In 1998, three persons from the Gaza Strip were placed in administrative detention. There were nine hunger strikes in different prisons during the same period. The current longest-standing administrative detainee is in his fifth year of detention. It should be recalled that the Oslo Accords called for the release of Palestinian detainees. In addition, the Wye River Memorandum called for the release of 750 Palestinian prisoners, only 250 of whom have been released to date.

32. Administrative detentions by the Palestinian Authority continue to be worrying. Reportedly, there was a sharp increase in detentions during the last months of 1998. Many cases were related to individuals exercising their right to freedom of expression.

33. The interrogation methods used by the Israeli General Security Service (GSS) with regard to Palestinian detainees and prisoners suspected of

alleged security offences have remained the same. The Special Rapporteur was informed that the new development in this connection was that the GSS had stopped denying that it resorts to such methods. It will be recalled that the administrative guidelines under the confidential Landau Commission report followed by the GSS permit the exercise of "moderate physical pressure" and that, in 1997, the United Nations Committee against Torture found that such methods constituted breaches of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Israel in 1991, and therefore amounted to torture. International law absolutely prohibits torture and "no exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture". The Committee recommended that interrogations applying any other methods that are in conflict with the provisions of articles 1 and 16 of the Convention cease immediately.

34. One source informed the Special Rapporteur that during the period under review, the methods of torture used by the GSS had become less dramatic and violent, mostly consisting of hooding and position abuse. Nevertheless, the Special Rapporteur was informed about an interrogation method which consisted of cutting off a detainee's blood circulation by placing him in extremely tight handcuffs; the resulting strong pressure on the upper arm causes the person to lose consciousness in approximately three minutes. A lawyer showed the Special Rapporteur a "torture chart" drawn up by the GSS indicating the type of torture or ill-treatment to which a detainee or prisoner was subjected, on what dates and at what times.

35. The Special Rapporteur's attention was drawn to the role of doctors in the context of interrogation methods amounting to torture who are required to fill in a type of "fitness for interrogation" form, thereby indicating which interrogation methods should not be used and hence contributing to torture. He was informed that the GSS law and the discussion of the bill concerning compensation to Palestinian victims of torture by the Israel Defence Forces in the Knesset Committee on Constitutional Law had been suspended, but that they could be resumed at any time.

36. The Special Rapporteur met in Gaza with mental health professionals who deal with Palestinian torture victims. They informed him that even years after their release, former prisoners and their families continued to suffer traumas which affected the whole Palestinian community. One of the manifestations of the humiliation and psychological effects of torture was domestic violence. The Special Rapporteur's interlocutors were currently working on prevention, capacity-building, awareness campaigns and training services in the field of mental health as well as therapies to teach people how to cope. Numerous people suffered from Post Traumatic Stress Disorder. The situation of former prisoners and their wives and children was further compounded by the serious economic situation in which parents at times cannot even provide the family with food, as well as the dashed hopes regarding the peace process and the hardships it has brought to the population of the occupied territories. The Special Rapporteur was informed that the unemployment rate in Gaza stood at 62 per cent and that there was a very strong correlation between the unemployment of fathers and anxiety in children.

37. The Special Rapporteur was informed about the process of legitimizing torture in Israel through legislation. To date, the High Court of Justice has not pronounced itself regarding the legality of interrogation methods which amount to torture, but has lifted interim injunctions prohibiting torture with regard to specific cases. The Knesset has also not taken a decision on the matter to date. Should it pass legislation to that effect, Israel would become the first country to officially legalize torture. The Special Rapporteur was informed that the Israeli authorities persisted in the affirmation that the methods described above did not amount to torture.

38. Palestinians detained by the Palestinian Authority are often, in the course of interrogation, subjected to torture. It has been mentioned that in a number of cases, a chain of culpability can be established: the Palestinian policeman torturing detainees may well himself have been a victim of torture by Israelis.

39. The Special Rapporteur was informed that on the whole, strict closures of the occupied territories as a form of collective punishment had been implemented to a lesser degree than in the past. Nevertheless, the occupied territories were subjected to six weeks of closure between September 1998 and mid-November. Closures as well as curfews continued to be applied in specific locations in the occupied territories when security incidents occurred.

40. Palestinian workers need a permit to work in Israel. These are issued in limited numbers and according to certain criteria. The permits are time-limited and allow the bearers to work, but are not obtained through a governmental employment agency so the workers do not get health and other insurance, proper wages and other benefits. Most Palestinian workers employed in Israel receive minimum wages or well below that level. The Special Rapporteur was informed that restrictions on the freedom of movement and the need to obtain work permits were becoming a form of blackmail used against workers by so-called "permit brokers". In addition, the sources stated that the issuing of magnetic identity cards and the renewal of permits had increasingly become conditioned upon accepting to collaborate with the Israeli security authorities. The Special Rapporteur was informed that numerous workers were fired after only a few days and their permits cancelled. There has been a 30 per cent increase in this type of worker complaint during the period under review: 120 out of 300 cases of complaint concerned cheating by Israeli employers. Workers were on occasion also beaten by their employers. Employers have also threatened workers who ask for their rights with dismissal or tell them they will call the police and say that the worker tried to stab them. The situation of Palestinian workers was said to be worst in the Erez industrial zone.

41. The limitations imposed on the freedom of movement of the population of the occupied territories have continued to affect to a large extent their social and economic well-being. In addition to the limited number of Palestinian workers who have permits to work in Israel, the harsh economic situation has been further compounded by the failure of Israeli tax authorities to refund monies owed to Palestinians. The Palestinian and Israeli economies continue to be closely interrelated, and the Palestinian economy is totally dependent on Israel. The Special Rapporteur was told that 90 per cent of all goods consumed by Palestinians come from Israel. The

amount of Israeli control exercised over the import and export of goods, in particular agricultural produce, continued to have a negative impact on Palestinian trade.

42. Palestinians still need permits to enter Israel and other parts of the occupied territories, in particular East Jerusalem, despite the fact that article 4 of the Declaration of Principles on Interim Self-Government Arrangements states that "the two sides view the West Bank and the Gaza Strip as a single territorial unit". The subsequent Interim Agreement signed on 28 September 1995 provides for procedures to operate a "safe passage" between the two parts of the territories, which has not occurred to date. Movement between parts of the occupied territories and between the occupied territories and Israel remains very difficult. During his recent mission to the area, the Special Rapporteur was obliged to hold one meeting in the West Bank since one of the persons present did not have a permit to enter Jerusalem.

43. The Special Rapporteur was once again informed about the situation of children in the occupied territories, in particular in the Gaza Strip. He was informed that the economic and social situation also affected the health of children. According to a survey, 20 per cent of children under six years of age suffered from malnutrition. Most children do not complete primary education. The Special Rapporteur was informed that children in the Gaza Strip were harassed by soldiers near settlements when they had to cross certain areas in order to go to school. In addition, some 400 students from Gaza continued to be denied access to universities in the West Bank. As an example, the Special Rapporteur was informed that five years ago, 35 per cent of students in one faculty of Bir Zeit University in the West Bank were from Gaza. This number has now been reduced to 1 out of 120. The restrictions imposed on the freedom of movement of Palestinians continued to have serious repercussions on their health, causing daily suffering for people who cannot get permits in order to undergo medical treatment in Israel or other parts of the occupied territories. The Special Rapporteur was told that out of the 600 children born with a congenital heart condition in Gaza, only half were sent for treatment.

44. The Special Rapporteur visited the Palestinian High Council for Motherhood and Childhood which was in the process of developing a Palestinian National Plan for Motherhood and Childhood. He also visited the "Palestine Avenir Foundation" which had programmes for children in the areas of rehabilitation of physically handicapped children; a mobile education unit; education and culture courses; and a mural painting programme.

45. The number of violent clashes between Palestinians and Israelis declined owing to the fewer opportunities for direct physical contact in comparison to the intifada period. Still, 334 Palestinians have been killed by Israeli soldiers or settlers since the Oslo peace process began. Five Palestinians were killed during recent clashes in the occupied territories, some of whom by rubber-coated steel bullets which are used to disperse demonstrations. One of them was 20-year-old Nasser Erekat who was shot in the head with a rubber bullet from a distance of about 10 metres while the Israeli army's rules of engagement directives concerning regulations for opening fire stipulate that rubber bullets should not be fired from less than 40 metres' distance, should not be fired at children, and should only be fired at the lower part of the

body. It is estimated that since the beginning of the intifada, at least 57 Palestinians, including 28 children, have been killed by rubber-coated steel bullets. Hardly any soldiers have been brought to justice. In Bethlehem, 18 children were shot by Israeli soldiers in recent clashes and 2 persons were killed in Kalkiliya by live ammunition. Most of the persons injured had been shot in the lower part of the body.

46. The Special Rapporteur was informed that there were fewer deaths at checkpoints owing to Israeli soldiers refusing to allow Palestinian ambulances to pass. Nevertheless, there were two deaths at checkpoints in 1998. One of them was a mother who died after childbirth at the checkpoint in Hebron. The Israeli soldiers made her wait because she did not have a permit. The Special Rapporteur was told that the Israeli army had admitted that this was a mistake and against its policy and the soldiers concerned were reportedly brought before a military court.

47. The Special Rapporteur asked most of his interlocutors about people-to-people relations between Israelis and Palestinians. He was told that the Israelis most often encountered by Palestinians were soldiers and settlers. The Special Rapporteur was also told that it was difficult to have people-to-people contacts in the light of the restrictions on the freedom of movement of Palestinians. He was told that there had been a higher level of cooperation between the two peoples during the intifada and before the signing of the Oslo Agreements. One person said that Israel was "the furthest country in the world" for Palestinians.

II. CONCLUSIONS AND RECOMMENDATIONS

48. The human rights situation in the occupied territories is hostage to political considerations and expediences. The understanding of the importance of a wider concept of security, including respect for human rights and humanitarian law, with respect to the Israeli-Palestinian conflict is spreading within the international community. Unfortunately, the parties themselves do not yet share this view, thereby prolonging the conflict unnecessarily.

49. Human rights must be integrated into the political and economic discussions concerning the conflict. To facilitate this, solutions and conclusions reached elsewhere should be carefully studied - such as the model of the Organization for Security and Cooperation in Europe referred to by the Special Rapporteur in his last report (E/CN.4/1998/17, paras. 68-70). Within the United Nations, only a few years ago the interrelationship between human rights and peace and security was fiercely contested. Today, this fact is routinely accepted, highlighted by the Secretary-General, the High Commissioner for Human Rights and Member States in their statements and actions. This consideration could be a starting point for reviewing human rights in the context of ongoing processes, in particular those based on the Oslo Agreements and the Wye River Memorandum.

50. Regrettably, an overall assessment of the human rights situation remains worrying. While there is certain positive development to be recognized on the

Israeli side - such as the decrease in administrative detentions and discontinuation of the most flagrant torture methods - it appears that such violations are increasing on the Palestinian side. The pressure exercised by the Occupying Power on the Palestinian Authority, while explaining many violations, does not justify them, nor does it absolve the Palestinian Authority of its responsibility. Tackling human rights violations is not a zero-sum game: both parties have their responsibilities to combat violations, based on their commitments and obligations under international law.

51. Persons placed under administrative detention by the Palestinian Authority should be brought before a court of justice without delay or released. Decisions of the court should be promptly implemented. Special emphasis should be given to the independence of the judiciary. Torture should not be allowed under any circumstances.

52. The volatile and disturbing political situation requires in-depth studies of the applicability of international law and continuous scrutiny of the fulfilment of obligations therein. This involves mainly the Government of Israel as a party to relevant conventions and agreements. A constructive engagement by the Government of Israel is called for.

53. An early and well-prepared convening of a conference of the High Contracting Parties to the Fourth Geneva Convention, as recommended by the General Assembly, is of the utmost importance.

54. The full and equal enjoyment by women of all human rights is a priority for the United Nations and for its Member States. This includes the integration and full participation of women in the Palestinian nation-building programmes as well as working towards the elimination of violence against women in public and private life. While bearing in mind that respect for rights of women and children in the occupied territories depends to a large extent on religion, social customs and family traditions, determined legislative efforts need to be maintained to enforce those rights.

55. The Palestinian people are being subjected to intensified pressure to do their part in the peace process. The Palestinian Authority, the Legislative Council, Palestinian institutions and the Palestinian people have to work together to fight against all human rights violations and build a democratic nation. The international community, Governments, non-governmental organizations and individuals should increasingly focus on this field in assisting Palestinians in their nation-building programme.

56. The Palestinian Authority, the Legislative Council, non-governmental organizations and the Palestinian people are once again to be commended for the full and constructive cooperation accorded to the Special Rapporteur. Their openness and readiness to discuss the human rights situation in all its aspects in a frank and transparent manner reflects a serious attitude towards respect for human rights. At the same time, it provides the basis for combating violations and improving the situation. The invaluable support of the international community in this work will continue to be crucial in the future.

57. The Government of Israel, regrettably, still refuses to cooperate with the United Nations human rights mechanisms. The position of the Government is contained in a letter addressed to the Special Rapporteur, which is reproduced below:

"Dear Mr. Ambassador,

"1. We have taken note of your request of 22 December 1998, that Israel cooperate with you as Special Rapporteur to the Territories during your forthcoming visit to the area.

"2. As you are aware, on 19 February 1993, the Commission on Human Rights adopted resolution 1993/2 A on the 'Question of the violation of human rights in the occupied Arab territories, including Palestine', in which it decided to 'appoint a Special Rapporteur to investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in the Palestinian territories occupied by Israel since 1967'.

"3. This resolution, like any other such resolutions adopted within the United Nations system, singles out Israel in a flagrantly negative way:

"(a) It predetermines the Rapporteur's role, resolving ab initio that Israel is in violation of international law and international conventions.

"(b) Contrary to all other 'geographical' rapporteurs who are appointed by the Commission on an annual basis, this Rapporteur has been assigned an open-ended mandate that is never subject to scrutiny, critique or modification.

"(c) The mandate is intrinsically anachronistic. It disregards the negotiations that have taken place between Israel and the PLO, resulting in a series of agreements by which over 97 per cent of the Palestinian population in the West Bank and the Gaza Strip are living under autonomous Palestinian administration. The Palestinian Authority, established by these agreements, exercises legislative, administrative and judicial powers over virtually all spheres of the population's daily life.

"(d) The mandate completely ignores the fact that there are two sides to the Middle East conflict. The Palestinian Authority has undertaken to respect human rights, yet at least 14 people have died while being tortured under interrogation in Palestinian prisons during the last three years. International humanitarian organizations cite numerous other grave violations of human rights under the Palestinian Authority, which the Rapporteur is not authorized to investigate according to the mandate.

"4. Despite the biased and unbalanced mandate, Israel decided to invite the previous Rapporteur - former President of Switzerland, Mr. René Felber - as a personal guest of the Minister of Foreign Affairs, with a view to assisting him in carrying out his functions.

"5. Two years after his appointment, Mr. Felber reached the conclusion that the problems in the Territories are political, and not humanitarian in nature. He thereupon resigned as Special Rapporteur on 9 February 1995.

"6. The Commission turned a blind eye to the conclusions set out in his report and, in April 1995, appointed a successor, in your person, without consulting Israel or even troubling to inform its Foreign Minister of the appointment.

"7. In light of the above, Israel decided to discontinue its cooperation with the Special Rapporteur, indicating however, that if the mandate were amended to become even-handed and time-limited, Israel would reconsider its position.

"8. Nevertheless, Israel's Ambassador in Geneva cooperated with you informally in 1995, 1996 and 1997, yet your reports have been consistently inaccurate and misleading, containing unsubstantiated or simply false facts, and repeatedly disregarding Israel's position.

"9. In this context, allow me to quote your own reports, between 1996 and 1998 on the need to change your mandate:

> 'the Special Rapporteur invites the Commission on Human Rights to consider amending his mandate in accordance with the foregoing' (para. 40, E/CN.4/1996/18 of 6 March 1996) (emphasis added).
>
> 'it is clear that the mandate of the Special Rapporteur as adopted some four years ago is in some ways obsolete and exceptional; it does not refer at all to the peace process; it does not authorize the Special Rapporteur to study and recommend constructive human rights and humanitarian programmes to prevent violations or remedy their aftermath. It limits itself to Israel's violations only in the Occupied Territories; and unlike all other mandates, its duration is open-ended ...' (para. 37, E/CN.4/1997/16 of 19 February 1997);
>
> 'the mandate of the Special Rapporteur, as it stands, is exceptional. It puts Israel in a different position compared to other countries subjected to the scrutiny of a Special Rapporteur. The mandate prejudges the outcome of the investigation. The consideration of the human rights situation in the area on the basis of the mandate is limited only to Israel's violations of international law. And, the mandate, unlike all the other mandates under the Commission on Human Rights, is not reviewed periodically.

> 'The main reason given for the unique mandate is the foreign occupation, which is said to constitute a unique situation in the world. It has been the consistent view of the Special Rapporteur that the mandate has to be reviewed.' (paras. 72-73, E/CN.4/1998/17 dated 19 February 1998).

"10. Until a revision is adopted, Israel regrets that it remains unable to accede to your request of 22 December 1998.

"We would request that the full text of this letter be incorporated in the body of your forthcoming report, as an authoritative statement of Israel's position.

"Please accept, Mr. Ambassador, the assurances of my highest consideration.

David Peleg
Ambassador
Permanent Representative"

58. In his statement at the fifty-fourth session of the Commission on Human Rights on 20 March 1998, the Special Rapporteur stated: "The attempt to discredit the report of the Special Rapporteur by the Government concerned is not new in this forum; that is rather expected particularly from a Government refusing to cooperate with the Rapporteur assigned to it. Therefore, to fulfil my task better, I have felt very strongly on the need to accomplish this cooperation. Based on the contents of my reports, the mandate is not and need not be the obstacle to the cooperation. And if that is the case, let me remind you once again that my voice seems to be among those very few who are asking amendments to the mandate - although in my case from the point of view of overall consistency as well as an improved framework for considering human rights".

59. As referred to in the last report (para. 73): "... The only reason for amending the mandate is the respect for human rights; the Special Rapporteur has to have a sufficiently broad mandate to contribute to achieving that goal. To that effect the Special Rapporteur - as an independent expert - needs to be given equal treatment with other special rapporteurs." The Special Rapporteur stands by this statement.

60. Furthermore, the Special Rapporteur stated in his report (para. 77): "... Israel should also have the courage to look beyond the mandate, to cooperate fully with the international human rights mechanisms and to participate actively in the substantive debate in this respect." The contents of the reports of the Special Rapporteur, and particularly the debate attached to the last report at the fifty-fourth session of the Commission, are clear evidence of the fact that there is no linkage between the mandate and cooperation. Nor can the cooperation be conditioned by the mandate.

61. The Special Rapporteur disagrees strongly with the insinuation in the letter cited above that there are no humanitarian problems in the occupied territories. If for nothing else, this report, together with earlier reports, is proof of violations against humanitarian as well as human rights law.

62. As referred to in the Introduction to this report, the Special Rapporteur has made every effort to reflect the situation as accurately as possible, based on information from a wide variety of Palestinian, Israeli and international sources. The Special Rapporteur would undoubtedly also take the facts and position of the Israeli Government into account in his report, should the Government choose to share that information with him.

63. It should be reiterated that the human rights concerns in the occupied territories cannot be held hostage to the political processes and discussions. The United Nations Commission on Human Rights is the main body to draw attention to and conduct an in-depth debate on the human rights situation in the area. This debate cannot take place in a vacuum. On the other hand, it should not be used to attack either party for political purposes only. In the debate - instead of accusing one side or the other for violations of human rights - an effort should be made to clarify the role of human rights in the context of ongoing political and economic discussions. Moreover, the debate should seek ways and means to do away with existing violations and to prevent any new violations.

64. The United Nations human rights mechanism has grown to an extensive network of thematic and country rapporteurs. Further efforts should be made to benefit more effectively from this machinery. Improved coordination and dissemination of information between the rapporteurs are essential. The working methods of the Commission, including its agenda, should continuously be reviewed to ensure the maximum output from its deliberations.

65. The international community has established that a just, comprehensive and sustainable peace settlement in the Middle East is based on certain key principles such as the right to self-determination for the Palestinians, including the establishment of a Palestinian State. Building a civil society under occupation remains a major challenge. Democracy, including regular elections and a multiparty system, and the rule of law are goals that need constant and unwavering attention by the Palestinian Authority, together with the Palestinian institutions and people. Democracy, rule of law and respect for human rights are inextricably linked and where continuous support by Governments, international and non-governmental organizations, donors and individuals is needed most.

66. While celebrating the fiftieth anniversary of the Universal Declaration of Human Rights, it ought to be recalled that almost all provisions of the Declaration are being violated in the occupied territories. To have a real reason to celebrate, let us start to work together to go through all those articles and make them a reality.